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LOZEAU DRURY LLP

510.836.4200
510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
doug@lozeaudrury.com

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

March 2, 2016

Jerome Rena Chetcuti, Owner
Roundtree Rock & Gardening
5300 Excelsior Road
Sacramento, CA 95827

**Re: Notice of Violations and Intent to File Suit under the Federal Water Pollution Control Act**

Dear Mr. Chetcuti:

I am writing on behalf of California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act (the "Act") that CSPA believes are occurring at Roundtree Rock & Garden's facility located at 5300 Excelsior Road in Sacramento, California ("Facility"). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Joaquin River and other California waters. This letter is being sent to Roundtree Rock & Gardening and Jerome Rena Chetcuti as the responsible owners or operators of the Facility (all recipients are hereinafter collectively referred to as "Roundtree").

This letter addresses Roundtree's unlawful discharge of pollutants from the Facility to channels that discharge to Morrison Creek, which flows into Stone Lake, and then into the Sacramento River. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2015-0057-DWQ ("2015 Permit"). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, CSPA refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." The WDID identification number for the Facility listed on documents submitted to the California Regional Water Quality Control Board, Central Valley Region ("Regional Board") is 5S34I021386. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Roundtree is hereby placed on formal notice by CSPA that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CSPA intends to file suit in federal court against Roundtree under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

## I. Background.

On or about December 21, 2007, Roundtree submitted a Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI") to the State Board. On or about June 24, 2015, Roundtree submitted an NOI to the State Board to comply with the 2015 Permit. In its NOI, Roundtree certifies that the Facility is classified under SIC codes 4212 ("Local Trucking with Storage") and 5093 ("Scrap and Waste Materials"). The Facility collects and discharges storm water from its 14.5-acre industrial site through at least three outfalls. On information and belief, CSPA alleges that all storm water discharges from the Facility contain storm water that is commingled with runoff from the Facility from areas where industrial processes occur. The outfalls discharge to channels that flow to Morrison Creek, which flows into Stone Lake, and then into the Sacramento River.

The Regional Board has identified beneficial uses of the Central Valley Region's waters and established water quality standards for the Sacramento River and its tributaries, which include Morrison Creek and the Sacramento River, in "The Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board, Central Valley Region – The Sacramento River Basin and The San Joaquin River Basin," generally referred to as the Basin Plan. *See* http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr.pdf. The beneficial uses of these water include, among others, water contact recreation, non-contact water recreation, municipal and domestic water supply, endangered and threatened species habitat, shellfish harvesting, and fish spawning. The non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but where there is generally no body contact with water, nor any likelihood of ingestion of water. These uses include, but are not limited to, picnicking, sunbathing, hiking, camping, boating, . . . hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." Basin Plan at II-1.00 – II-2.00. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people's use of Morrison Creek, Stone Lake, and the Sacramento River for contact and non-contact water recreation.

The Basin Plan establishes water quality standards for the Sacramento River and its tributaries. It includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life." *Id.* at III-8.01. It provides that "[w]ater shall not contain floating material in amounts that cause nuisance or adversely affect beneficial uses." *Id.* at III-5.00. It provides that "[w]ater shall be free of discoloration that causes nuisance or adversely affects beneficial uses." *Id.* It provides that "[w]aters shall not contain suspended materials in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at III-7.00. The Basin Plan also prohibits the discharges of oil and grease, stating that "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses." *Id.* at III-6.00. The Basin Plan provides that the pH shall not be depressed below 6.5 nor raised above 8.5. *Id.* The Basin Plan requires that "[w]aters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses." *Id.* at III-9.00.

The Basin Plan also provides that "[a]t a minimum, [surface] water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs) specified in the following provisions of Title 22 of the California Code of Regulations, which are incorporated by reference into this plan: Tables 64431-A (Inorganic Chemicals) and 64431-B (Fluoride) of Section 64431, Table 64444-A (Organic Chemicals) of Section 64444, and Table 64449-A (Secondary Maximum Contaminant Levels ["SMCLs"]-Consumer Acceptance Limits) and 64449-B (Secondary Maximum Containment Levels-Ranges) of Section 64449. This incorporation-by-reference is prospective, including future changes to the incorporated provisions as the changes take effect. At a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/l." Basin Plan at III-3.00. Table 64449-A provides an SMCL for aluminum of 0.2 mg/L and for iron of 0.3 mg/L.

Table III-1 of the Basin Plan provides a water quality objective ("WQO") for copper of 0.01 mg/L, iron of 0.3 mg/L and for zinc of 0.1 mg/L.

The California Toxics Rule (California Enclosed Bays & Estuaries) sets a freshwater numeric water quality standard for zinc of 0.12 mg/L (Criteria Maximum Concentration – "CMC") at a hardness of 100 mg/L $CaCO_3$.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT").[1] The following benchmarks have been established for pollutants discharged by Roundtree: pH –

[1] The Benchmark Values can be found at: http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf and http://cwea.org/p3s/documents/multi-sectorrev.pdf (Last accessed on February 29, 2016).

6.0 - 9.0 standard units ("s.u."); total suspended solids ("TSS") – 100 mg/L; oil and grease ("O&G") – 15 mg/L; chemical oxygen demand ("COD") – 120 mg/L; aluminum – 0.75 mg/L; iron – 1.0 mg/L; copper – 0.636 mg/L; lead – 0.095 mg/L; zinc – 0.117 mg/L; nitrate + nitrite as nitrogen ("N+N") – 0.68 mg/L; and magnesium – 0.0636 mg/L.[2]

These benchmarks are reflected in the 2015 Permit in the form of Numeric Action Levels ("NALs"). The 2015 Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L; O&G – 15 mg/L; COD – 120 mg/L; N+N – 0.68 mg/L; aluminum – 0.75 mg/L,; iron – 1.0 mg/L; copper – 0.0332 mg/L; lead – 0.262 mg/L; zinc – 0.26 mg/L; and magnesium – 0.64 mg/L. The 2015 Permit also establishes the following instantaneous NALs: pH – 6.0-9.0 s.u.; TSS – 400 mg/L; and O&G – 25 mg/L.

## II. Alleged Violations of the NPDES Permit.

### A. Discharges in Violation of the Permit

Roundtree has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit, Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water

[2] The values for zinc and lead are hardness dependent, and correspond to a total hardness of 100-125 mg/L, which is the default listing in the California Toxics Rule.

discharges that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of the 2015 Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

Roundtree has discharged and continues to discharge storm water with unacceptable levels of TSS, COD, N+N, aluminum, iron, zinc, copper, lead, magnesium and potentially other pollutants in violation of the General Permit. Roundtree's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained concentrations of pollutants in excess of numeric water quality standards established in the Basin Plan and the California Toxics Rule. They have thus violated Discharge Prohibitions A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit, and Effluent Limitation V(A) of the 2015 Permit.

| **Date** | **Parameter** | **Observed Concentration/ Conditions** | **Basin Plan Water Quality Objective/ California Toxics Rule** | **Outfall (as identified by the Facility)** |
|---|---|---|---|---|
| 1/5/2016 | pH | 9 | 6.5 – 8.5 | SP2 |
| 1/5/2016 | Iron | 3.7 mg/L | 0.3 mg/L (SMCL/WQO) | SP2 |
| 12/2/2014 | Iron | 2.6 mg/L | 0.3 mg/L (SMCL/WQO) | NE Discharge |
| 2/28/2014 | Iron | 14 mg/L | 0.3 mg/L (SMCL/WQO) | Discharge Location 1 |
| 2/8/2014 | Iron | 23 mg/L | 0.3 mg/L (SMCL/WQO) | Discharge Location 1 |
| 3/20/2013 | Iron | 1.3 mg/L | 0.3 mg/L (SMCL/WQO) | SP1 NE Corner |
| 11/30/2012 | Iron | 4.5 mg/L | 0.3 mg/L (SMCL/WQO) | SP1 NE Corner |
| 3/27/2012 | Iron | 2.3 mg/L | 0.3 mg/L (SMCL/WQO) | SP1 NE Corner |

| | | | | |
|---|---|---|---|---|
| 2/29/2012 | Iron | 1.5 mg/L | 0.3 mg/L (SMCL/WQO) | SP1 NE Corner |
| 6/1/2011 | Iron | 1.9 mg/L | 0.3 mg/L (SMCL/WQO) | DP #1 SE Corner |
| 5/25/2011 | Iron | 1.8 mg/L | 0.3 mg/L (SMCL/WQO) | DP #1 NE Corner |
| 1/5/2016 | Aluminum | 3.5 mg/L | 0.2 mg/L (SMCL) | SP2 |
| 12/2/2014 | Aluminum | 3.6 mg/L | 0.2 mg/L (SMCL) | NE Discharge |
| 2/28/2014 | Aluminum | 10 mg/L | 0.2 mg/L (SMCL) | Discharge Location 1 |
| 2/8/2014 | Aluminum | 17 mg/L | 0.2 mg/L (SMCL) | Discharge Location 1 |
| 3/20/2013 | Aluminum | 1.2 mg/L | 0.2 mg/L (SMCL) | SP1 NE Corner |
| 11/30/2012 | Aluminum | 3.5 mg/L | 0.2 mg/L (SMCL) | SP1 NE Corner |
| 3/27/2012 | Aluminum | 2.2 mg/L | 0.2 mg/L (SMCL) | SP1 NE Corner |
| 2/29/2012 | Aluminum | 1.5 mg/L | 0.2 mg/L (SMCL) | SP1 NE Corner |
| 6/1/2011 | Aluminum | 2.1 mg/L | 0.2 mg/L (SMCL) | DP #1 SE Corner |
| 5/25/2011 | Aluminum | 1.8 mg/L | 0.2 mg/L (SMCL) | DP #1 NE Corner |
| 12/2/2014 | Zinc | 0.16 mg/L | 0.1 mg/L (WGO) / 0.12 mg/L (CMC) | NE Discharge |
| 2/28/2014 | Zinc | 0.12 mg/L | 0.1 mg/L (WGO) | Discharge Location 1 |
| 2/8/2014 | Zinc | 0.15 mg/L | 0.1 mg/L (WGO) / 0.12 mg/L (CMC) | Discharge Location 1 |
| 3/27/2012 | Zinc | 0.11 mg/L | 0.1 mg/L (WGO) | SP1 NE Corner |
| 12/2/2014 | Lead | 0.018 mg/L | 0.015 mg/L (MCL) | NE Discharge |
| 3/27/2012 | Lead | 0.088 mg/L | 0.015 mg/L (MCL) | SP1 NE Corner |
| 12/2/2014 | Copper | 0.15 mg/L | 0.01 mg/L (WQO) | NE Discharge |
| 2/28/2014 | Copper | 0.028 mg/L | 0.01 mg/L (WQO) | Discharge Location 1 |
| 2/8/2014 | Copper | 0.041 mg/L | 0.01 mg/L (WQO) | Discharge Location 1 |
| 3/20/2013 | Copper | 0.026 mg/L | 0.01 mg/L (WQO) | SP1 NE Corner |
| 3/27/2012 | Copper | 0.021 mg/L | 0.01 mg/L (WQO) | SP1 NE Corner |
| 2/29/2012 | Copper | 0.013 mg/L | 0.01 mg/L (WQO) | SP1 NE Corner |
| 6/1/2011 | Copper | 0.026 mg/L | 0.01 mg/L (WQO) | DP #1 SE Corner |
| 5/25/2011 | Copper | 0.014 mg/L | 0.01 mg/L (WQO) | DP #1 NE Corner |
| 5/6/2015 | Narrative | Turbidity | | Northeast |
| 4/7/2015 | Narrative | Turbidity | | Northeast |
| 3/11/2015 | Narrative | Turbidity | | Northeast |
| 2/7/2015 | Narrative | Turbidity | | Northeast |
| 12/2/2014 | Narrative | Turbidity | | Northeast |
| 11/20/2014 | Narrative | Turbidity | | Northeast |
| 10/31/2014 | Narrative | Turbidity / Sheen | | DP #1 Northeast |
| 2/8/2014 | Narrative | Turbidity / Color | | Discharge Location 1 |

The information in the above table reflects data gathered from Roundtree's self-monitoring during the 2010-2011, 2011-2012, 2012-2013, 2013-2014, and 2014-2015 wet seasons and the 2015-2016 reporting year. CSPA alleges that since March 2, 2011, and continuing through today, Roundtree has discharged storm water contaminated with pollutants at levels that exceed one or more applicable water quality standards, including but not limited to each of the following:

- pH – 6.5 – 8.5 (Basin Plan)
- Iron – 0.3 mg/L (Water Quality Objective)
- Iron – 0.3 mg/L (Secondary MCL)
- Aluminum – 0.2 mg/L (Secondary MCL)
- Zinc – 0.12 mg/L (CMC)
- Zinc – 0.1 mg/L (Water Quality Objective)
- Lead – 0.015 mg/L (MCL)
- Copper – 0.01 mg/L (WQO)
- Turbidity – Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. (Basin Plan at III-9.00)
- Sheen – Waters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses. (Basin Plan at III-6.00)
- Color – Water shall be free of discoloration that causes nuisance or adversely affects beneficial uses. (Basin Plan at III-5.00)

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

| Date | Parameter | Observed Concentration | EPA Benchmark Value / NAL | Outfall (as identified by the Facility) |
|---|---|---|---|---|
| 1/5/2016 | Iron | 3.7 mg/L | 1.0 mg/L | SP2 |
| 1/5/2016 | Aluminum | 3.5 mg/L | 0.75 mg/L | SP2 |
| 12/2/2014 | Total Suspended Solids | 860 mg/L | 100 mg/L | NE Discharge |
| 12/2/2014 | Iron | 2.6 mg/L | 1.0 mg/L | NE Discharge |
| 12/2/2014 | Aluminum | 3.6 mg/L | 0.75 mg/L | NE Discharge |
| 12/2/2014 | Copper | 0.15 mg/L | 0.0332 mg/L | NE Discharge |
| 2/28/2014 | Total Suspended Solids | 260 mg/L | 100 mg/L | Discharge Location 1 |
| 2/28/2014 | Iron | 14 mg/L | 1.0 mg/L | Discharge Location 1 |
| 2/28/2014 | Aluminum | 10 mg/L | 0.75 mg/L | Discharge Location 1 |
| 2/28/2014 | Copper | 0.028 mg/L | 0.0332 mg/L | Discharge Location 1 |

| | | | | |
|---|---|---|---|---|
| 2/8/2014 | Total Suspended Solids | 320 mg/L | 100 mg/L | Discharge Location 1 |
| 2/8/2014 | Iron | 23 mg/L | 1.0 mg/L | Discharge Location 1 |
| 2/8/2014 | Aluminum | 17 mg/L | 0.75 mg/L | Discharge Location 1 |
| 2/8/2014 | Copper | 0.041 mg/L | 0.0332 mg/L | Discharge Location 1 |
| 3/20/2013 | Iron | 1.3 mg/L | 1.0 mg/L | SP1 NE Corner |
| 3/20/2013 | Aluminum | 1.2 mg/L | 0.75 mg/L | SP1 NE Corner |
| 3/20/2013 | Magnesium | 33 mg/L | 0.64 mg/L | SP1 NE Corner |
| 11/30/2012 | Iron | 4.5 mg/L | 1.0 mg/L | SP1 NE Corner |
| 11/30/2012 | Aluminum | 3.5 mg/L | 0.75 mg/L | SP1 NE Corner |
| 3/27/2012 | Total Suspended Solids | 420 mg/L | 100 mg/L | SP1 NE Corner |
| 3/27/2012 | Iron | 2.3 mg/L | 1.0 mg/L | SP1 NE Corner |
| 3/27/2012 | Aluminum | 2.2 mg/L | 0.75 mg/L | SP1 NE Corner |
| 3/27/2012 | Nitrate + Nitrite as N | 0.69 mg/L | 0.68 mg/L | SP1 NE Corner |
| 2/29/2012 | Total Suspended Solids | 110 mg/L | 100 mg/L | SP1 NE Corner |
| 2/29/2012 | Iron | 1.5 mg/L | 1.0 mg/L | SP1 NE Corner |
| 2/29/2012 | Aluminum | 1.5 mg/L | 0.75 mg/L | SP1 NE Corner |
| 6/1/2011 | Total Suspended Solids | 390 mg/L | 100 mg/L | DP #1 SE Corner |
| 6/1/2011 | Chemical Oxygen Demand | 260 mg/L | 120 mg/L | DP #1 SE Corner |
| 6/1/2011 | Iron | 1.9 mg/L | 1.0 mg/L | DP #1 SE Corner |
| 6/1/2011 | Aluminum | 2.1 mg/L | 0.75 mg/L | DP #1 SE Corner |
| 6/1/2011 | Nitrate + Nitrite as N | 4.8 mg/L | 0.68 mg/L | DP #1 SE Corner |
| 5/25/2011 | Total Suspended Solids | 290 mg/L | 100 mg/L | DP #1 NE Corner |
| 5/25/2011 | Iron | 1.8 mg/L | 1.0 mg/L | DP #1 NE Corner |
| 5/25/2011 | Aluminum | 1.8 mg/L | 0.75 mg/L | DP #1 NE Corner |

The information in the above table reflects data gathered from Roundtree's self-monitoring during the 2010-2011, 2011-2012, 2012-2013, 2013-2014, and 2014-2015 wet seasons, and the 2015-2016 reporting year. CSPA alleges that since at least March 2, 2011, Roundtree has discharged storm water contaminated with pollutants at levels that exceed one or more applicable EPA Benchmarks or NALs, including but not limited to each of the following:

- Total Suspended Solids – 100 mg/L
- Iron – 1.0 mg/L
- Aluminum – 0.75 mg/L
- Chemical Oxygen Demand – 120 mg/L
- Nitrate + Nitrite as Nitrogen – 0.68 mg/L
- Copper – 0.0332 mg/L
- Magnesium – 0.64 mg/L

CSPA's investigation, including its review of Roundtree's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, EPA benchmark values, and NALs, indicates that Roundtree has not implemented

BAT and BCT at the Facility for its discharges of TSS, COD, iron, aluminum, copper, lead, magnesium, N+N, zinc, and other pollutants in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. Roundtree was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, Roundtree is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit. CSPA alleges that such violations also have occurred and will occur on other rain dates, including on information and belief every significant rain event that has occurred since March 2, 2011, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Roundtree has discharged storm water containing impermissible and unauthorized levels of TSS, iron, aluminum, COD, N+N, copper, lead, magnesium, and zinc in violation of Section 301(a) of the Act as well as Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.[3]

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of TSS, iron, aluminum, COD, N+N, copper, lead, magnesium, zinc, and storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Roundtree is subject to penalties for violations of the General Permit and the Act since March 2, 2011.

### B. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Facility.

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. See 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. See

[3] The rain dates on the attached table are all the days when 0.1" or more rain was observed at a weather station in Sacramento, approximately 11 miles from the Facility. http://www.ipm.ucdavis.edu/calludt.cgi/WXDESCRIPTION?STN=FAIR_OAKS.A (Last accessed on March 1, 2016).

2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to both observe and to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that BMPs are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Sections B(3) - B(16) of the 1997 Permit set forth the monitoring and reporting requirements. As part of the Monitoring Program, all facility operators must conduct visual observations of storm water discharges and authorized non-storm water discharges, and collect and analyze samples of storm water discharges. As part of the Reporting Program, all facility operators must timely submit an Annual Report for each reporting year. The monitoring and reporting requirements of the 2015 Permit are substantially similar to those in the 1997 Permit, and in several instances more stringent.

**i. Failure to Conduct Sampling and Analysis**

The 1997 Permit requires dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at a facility. *See* 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample *four* (rather than two) storm water discharges from all discharge locations over the course of the reporting year. *See* 2015 Permit, §§ XI(B)(2), (3). Storm water discharges trigger the sampling requirement under the 1997 Permit when they occur during facility operating hours and are preceded by at least three working days without storm water discharge. *See* 1997 Permit, § B(5)(b). The 2015 Permit broadens this qualifying storm event definition by requiring that the storm water discharges be preceded by 48 hours without discharge from any drainage area in order to trigger the sampling requirement. *See* 2015 Permit, § XI(B)(1)(b). A sample must be collected from each discharge point at the facility, and in the event that an operator fails to collect samples from the first storm event, the operators must still collect samples from two other storm events and "shall explain in the Annual Report why the first storm event was not sampled." *See* 1997 Permit, § B(5)(a). The Facility has repeatedly violated these monitoring requirements.

As described in the Facility's Storm Water Pollution Prevention Plan, there are three discharge locations for the facility. However, during the past five years, Roundtree has only sampled and analyzed discharges from one storm water discharge location at the Facility.[4] Thus, on information and belief, CSPA alleges that during each of the past five wet seasons and during

[4] It appears that the only location that the Facility has monitored is drainage location at the northeast corner. However, CSPA notes the 2010-2011 Annual Report indicates that the June 1, 2011, sample was taken from the "SE Corner." It is unclear whether the Facility actually sampled at the southeast corner or whether this was a typo, considering that the laboratory reports attached to the 2010-2011 Annual Report provide the same location description for both the May 25, 2011 sample and the June 1, 2011 sample.

the current reporting year, Roundtree has failed to sample and analyze storm water discharges from two of its discharge locations at the Facility during each required sampling event. This results in at least four violations of the General Permit for each wet season resulting in at least 20 violations.

In addition, during the 2014-2015 wet season, Roundtree only sampled storm water discharges from one storm event at the Facility. This results in a violation of Section B(5) of the 1997 Permit.

The above violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Roundtree is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since March 2, 2011.

**ii. Failure to Conduct Visual Observations**

Section B of the 1997 Permit describes the visual monitoring requirements for storm water discharges. Facilities are required to make monthly visual observations of storm water discharges from all drainage areas (Section B(4)). Section B(7) requires that the visual observations must represent the "quality and quantity of the facility's storm water discharges from the storm event." The requirement to make monthly visual observations of storm water discharges is continued in Section XI(A) of the 2015 Permit.

On information and belief, CSPA alleges that Roundtree failed to conduct monthly visual observations of storm water discharges from two of its drainage areas – discharges associated with Drainage Areas 2 and 3 – for the past five years. This results in at least 80 violations of the General Permit. These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Roundtree is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since March 2, 2011.

**iii. Failure to Analyze for Pollutants That May Be Present in Significant Quantities**

Under the 1997 Permit, facilities must analyze storm water samples for "toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." 1997 Permit, Section B(5)(c)(ii). Under the 2015 Permit, facilities must analyze storm water samples for "[a]dditional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment." 2015 Permit, Section XI(B)(6)(c).

Roundtree analyzed a storm water sample it took from "SP1 NE Corner" on March 20, 2013, for magnesium. It measured a concentration of 33 mg/L, a level that is over 50 times the Benchmark Value/NAL for magnesium. Thus, magnesium is a pollutant likely to be present in

Roundtree's storm water discharges in significant quantities. On information and belief, CSPA alleges that Roundtree has never otherwise analyzed its storm water discharges for magnesium. This failure to analyze magnesium in each sampling event results in at least 9 violations of the General Permit. These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Roundtree is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since March 2, 2011.

### C. Failure Complete Annual Comprehensive Site Compliance Evaluation

Section B(14) of the 1997 Permit requires operators to submit an Annual Report to the Regional Board by July 1 of each year. The 1997 Permit, in relevant part, requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation Report ("ACSCE Report"). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation ("Annual Evaluation") that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. See 2015 Permit, § XV.

Information available to CSPA indicates that Roundtree has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit. None of the Facility's ACSCE Reports provide an explanation of the Facility's failure to take steps to reduce or prevent high levels of pollutants observed in the Facility's storm water discharges. See 1997 Permit Receiving Water Limitation C(3) and C(4) (requiring facility operators to submit a report to the Regional Board describing current and additional BMPs necessary to prevent or reduce pollutants causing or contributing to an exceedance of water quality standards); see also 2015 Permit § X(B)(1)(b). These examples of failures to assess the Facility's BMPs and respond to inadequacies in the ACSCE Reports negates a key component of the evaluation process required in self-monitoring programs such as the General Permit. Instead, Roundtree has consistently proposed minimal BMPs that failed to properly respond to EPA benchmark and water quality standard exceedances, in violation of the General Permit.

CSPA puts Roundtree on notice that its failures to complete ACSCE Reports are violations of the General Permit and the CWA. Roundtree is in ongoing violation of Section XV of the 2015 Permit every day the Facility operates without evaluating the effectiveness of BMPs and the need for additional BMPs. These violations are ongoing. Each of these violations is a separate and distinct violation of the General Permit and the CWA. Roundtree is subject to civil penalties for all violations of the CWA occurring since March 2, 2011.

**D. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.**

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. See 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet § I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations and receiving water limitations. See 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. See 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. See 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. See 2015 Permit Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to

reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. See 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. See 2015 Permit § X(H)(4), (5).

Despite these clear BMP requirements, Roundtree has been conducting and continues to conduct industrial operations at the Facility with an inadequately developed, implemented, and/or revised SWPPP.

The SWPPP fails to comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP fails to implement and maintain any advanced BMPs necessary to reduce or prevent discharges of pollutants in its storm water discharge in a manner that reflects best industry practice considering technological availability and economic practicability and achievability. The 2015 SWPPP maintains that no additional advanced BMPs are required, which is unlikely given the ongoing presence of high levels of pollutants in the Facility's storm water discharges.

Most importantly, the Facility's storm water samples and discharge observations have consistently greatly exceeded EPA benchmarks, NALs, and water quality standards, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges. Despite these exceedances, Roundtree has failed to sufficiently update the Facility's SWPPP. The Facility's SWPPP has therefore never achieved the General Permit's objective to identify and implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges.

CSPA puts Roundtree on notice that it violates the General Permit and the CWA every day that the Facility operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and CSPA will include additional violations as information and data become available. Roundtree is subject to civil penalties for all violations of the CWA occurring since March 2, 2011.

## III. Persons Responsible for the Violations.

CSPA puts Roundtree Rock & Gardening and Jerome Rena Chetcuti on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Roundtree Rock & Gardening and Jerome Rena Chetcuti on notice that it intends to include those persons in this action.

**IV. Name and Address of Noticing Parties.**

The name, address and telephone number of California Sportfishing Protection Alliance is as follows:

Bill Jennings, Executive Director
California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, CA 95204
Tel. (209) 464-5067
deltakeep@me.com

**V. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Douglas J. Chermak
Michael R. Lozeau
Lozeau Drury LLP
410 12th Street, Suite 250
Oakland, California 94607
Tel. (510) 836-4200
doug@lozeaudrury.com
michael@lozeaudrury.com

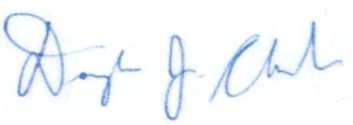
**VI. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Roundtree to a penalty of up to $37,500 per day per violation for all violations. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CSPA intends to file a citizen suit under Section 505(a) of the Act against Roundtree and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CSPA would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CSPA suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CSPA does not

intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Douglas J. Chermak
Lozeau Drury LLP
Attorneys for California Sportfishing Protection Alliance

**SERVICE LIST – via certified mail**

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Loretta Lynch, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Jared Blumenfeld, Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Pamela C. Creedon, Executive Officer
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

**ATTACHMENT A**

Rain Dates, Roundtree Rock & Gardening, Sacramento, CA

| | | |
|---|---|---|
| 3/2/2011 | 3/25/2012 | 2/6/2014 |
| 3/6/2011 | 3/27/2012 | 2/7/2014 |
| 3/13/2011 | 3/28/2012 | 2/8/2014 |
| 3/14/2011 | 3/31/2012 | 2/9/2014 |
| 3/15/2011 | 4/3/2012 | 2/26/2014 |
| 3/16/2011 | 4/11/2012 | 2/27/2014 |
| 3/18/2011 | 4/12/2012 | 2/28/2014 |
| 3/19/2011 | 4/13/2012 | 3/2/2014 |
| 3/20/2011 | 4/25/2012 | 3/3/2014 |
| 3/23/2011 | 6/4/2012 | 3/5/2014 |
| 3/24/2011 | 10/22/2012 | 3/10/2014 |
| 3/26/2011 | 10/23/2012 | 3/25/2014 |
| 4/21/2011 | 11/1/2012 | 3/26/2014 |
| 4/25/2011 | 11/8/2012 | 3/29/2014 |
| 5/9/2011 | 11/9/2012 | 3/31/2014 |
| 5/15/2011 | 11/16/2012 | 4/1/2014 |
| 5/17/2011 | 11/17/2012 | 4/25/2014 |
| 5/25/2011 | 11/18/2012 | 5/5/2014 |
| 5/28/2011 | 11/20/2012 | 9/25/2014 |
| 6/1/2011 | 11/21/2012 | 10/31/2014 |
| 6/4/2011 | 11/28/2012 | 11/1/2014 |
| 6/28/2011 | 11/29/2012 | 11/13/2014 |
| 10/4/2011 | 11/30/2012 | 11/20/2014 |
| 10/5/2011 | 12/1/2012 | 11/22/2014 |
| 10/6/2011 | 12/2/2012 | 11/28/2014 |
| 10/10/2011 | 12/5/2012 | 11/30/2014 |
| 11/5/2011 | 12/13/2012 | 12/2/2014 |
| 11/19/2011 | 12/17/2012 | 12/3/2014 |
| 11/20/2011 | 12/21/2012 | 12/6/2014 |
| 11/24/2011 | 12/22/2012 | 12/11/2014 |
| 1/19/2012 | 12/23/2012 | 12/12/2014 |
| 1/20/2012 | 12/25/2012 | 12/15/2014 |
| 1/21/2012 | 1/5/2013 | 12/16/2014 |
| 1/22/2012 | 1/6/2013 | 12/19/2014 |
| 1/23/2012 | 2/19/2013 | 1/9/2015 |
| 2/12/2012 | 3/20/2013 | 2/6/2015 |
| 2/13/2012 | 3/23/2013 | 2/7/2015 |
| 2/29/2012 | 3/24/2013 | 2/8/2015 |
| 3/1/2012 | 11/19/2013 | 2/9/2015 |
| 3/13/2012 | 11/20/2013 | 4/7/2015 |
| 3/14/2012 | 11/21/2013 | 4/24/2015 |
| 3/16/2012 | 12/6/2013 | 4/25/2015 |
| 3/17/2012 | 1/29/2014 | 5/7/2015 |
| 3/18/2012 | 1/30/2014 | 5/14/2015 |

**ATTACHMENT A**

Rain Dates, Roundtree Rock & Gardening, Sacramento, California

| | | |
|---|---|---|
| 10/13/2015 | 12/19/2015 | 1/15/2016 |
| 11/1/2015 | 12/21/2015 | 1/16/2016 |
| 11/2/2015 | 12/24/2015 | 1/17/2016 |
| 11/8/2015 | 12/28/2015 | 1/18/2016 |
| 11/9/2015 | 12/29/2015 | 1/19/2016 |
| 11/15/2015 | 1/4/2016 | 1/22/2016 |
| 12/3/2015 | 1/5/2016 | 1/23/2016 |
| 12/10/2015 | 1/6/2016 | 1/29/2016 |
| 12/13/2015 | 1/13/2016 | 2/17/2016 |
| 12/18/2015 | 1/14/2016 | 2/18/2016 |